

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

D.T.E. 02-34

1. Cambridge Electric Light Company (“Cambridge”), Commonwealth Electric Company (“Commonwealth”), and Canal Electric Company (“Canal”) (collectively, the “Petitioners”) hereby petition the Department of Telecommunications and Energy (the “Department”), pursuant to G.L. c. 164, §§ 1A, 1G, 76, 94, 94A and 94B, for the following: (1) approval of the sale of Canal’s interest in the nuclear power plant known as Seabrook Station (“Seabrook”), which is an operational 1,161-megawatt (“MW”) nuclear generating unit located in Seabrook, New Hampshire, to FPL Energy Seabrook, LLC (“FPLE Seabrook”); (2) approval of the Ninth Amendment to Power Contract By and Between Canal Electric Company, Cambridge Electric Light Company and Commonwealth Electric Company, which provides for Cambridge and Commonwealth’s buyout of any and all obligations with respect to purchasing Seabrook power from Canal (the “Buyout Agreement”); and (3) findings concerning the divested assets as eligible facilities for exempt wholesale

generator (“EWG”) status under Section 32 of the Public Utility Holding Company Act of 1935 (15 U.S.C. § 79z-5a) (“PUCHA”).

2. Cambridge is a Massachusetts corporation authorized to generate, transmit, purchase, sell, and distribute electricity, and is subject to the regulatory jurisdiction of the Department. Cambridge provides retail electric service to approximately 46,200 customers in the city of Cambridge, Massachusetts.
3. Commonwealth is a Massachusetts corporation authorized to generate, transmit, purchase, sell, and distribute electricity, and is subject to the regulatory jurisdiction of the Department. Commonwealth provides retail electric service to approximately 318,000 customers in 40 communities in southeastern Massachusetts, Cape Cod and Martha’s Vineyard.
4. Canal is an electric company providing wholesale electric service in Massachusetts and, as such, is subject to a limited degree of regulatory jurisdiction by the Department. Canal is headquartered at 800 Boylston Street, Boston, Massachusetts, and has a 3.52317 percent joint ownership interest in Seabrook. Canal is an affiliate of Cambridge and Commonwealth within NSTAR. Canal requires Department approval to divest its ownership interest in Seabrook and requires Department findings qualifying the divested assets for EWG status under PUHCA.
5. Cambridge, Commonwealth and Canal are parties to an agreement dated September 1, 1986, as amended by agreements dated June 1, 1988, February 28, 1990, December 5, 1991, December 19, 1991, March 6, 1992, November 1, 2000, April 1, 2001 and December 18, 2001, providing for the sale

- of capacity and related energy by Canal from Seabrook to Cambridge and Commonwealth under a life-of-the-unit agreement (currently anticipated to terminate in 2026) (the “Seabrook PPA”). Commonwealth is entitled to 80.06 percent of the capacity and related energy (approximately 32.5 MW) produced by that portion of Seabrook owned by Canal (3.52317 percent, or approximately 40.5 MW) and Cambridge is entitled to 19.94 percent (approximately 8 MW).
6. The Seabrook assets are being sold pursuant to the terms of the Purchase and Sale Agreement (the “PSA”) entered into on April 13, 2002 between owners of a controlling interest in Seabrook, including Canal, and FPLE Seabrook.
7. In support of this Petition, the Petitioners attach the following exhibits:
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| Exhibit 1 | Prefiled testimony of Robert H. Martin, Director, Electric Energy Supply, Asset Divestiture and Outsourcing for NSTAR Electric & Gas Corporation (the “Martin Testimony”). |
| Exhibit 2 | Prefiled testimony of Paul M. Dabbar, Vice President at JPMorgan Securities Inc. (“JPMorgan”), regarding the NHPUC auction (the “Dabbar Testimony”). |
| Exhibit 3 | Purchase and Sale Agreement entered into on April 13, 2002 between Canal and other Selling Owners of Seabrook, and the buyer, FPL Energy Seabrook, LLC. |
| Exhibit 4 | Ninth Amendment to Power Contract By and Between Canal Electric Company and Cambridge Electric Light Company and Commonwealth Electric Company, originally dated September 1, 1986. |
| Exhibit 5 | Cambridge/Commonwealth Transaction Analysis. |

II. STANDARD OF REVIEW

8. Approval of the divestiture and Buyout Agreement is requested pursuant to G.L. c. 164, §§ 1A, 1G, 76, 94, 94A and 94B as being in the public interest and the product of all reasonable steps taken to mitigate, to the maximum extent possible, the transition costs relating to Seabrook. The sales transaction meets the requirement that the “sale process is equitable and maximizes the value of the existing generation facilities being sold” (see Boston Edison Company/Commonwealth Electric Company, D.T.E. 98-119/126, at 5 (1999)). Moreover, the sales transaction and the Buyout Agreement are also consistent with the Petitioners’ Restructuring Plan (see D.P.U./D.T.E. 97-111).

III. SEABROOK AUCTION

9. Seabrook was offered for sale in a public auction. The auction was conducted pursuant to New Hampshire RSA 369-B:3, IV(b)(13) and Connecticut General Act 98-28, ‘An Act Concerning Electric Restructuring’ (Conn. Gen. Stat. Section 16-244f) (“CT Act”). Each of the joint owners, except for the Massachusetts Municipal Wholesale Electric Company, the Taunton Municipal Lighting Plant and the Hudson Light and Power Department, has offered their joint ownership interest for sale.¹
10. Pursuant to RSA 369-B:3, IV(b)(13) and Section 6(b) of the CT Act, the New Hampshire Public Utilities Commission (“NHPUC”) and the Connecticut

¹ The Selling Owners of Seabrook are: North Atlantic Energy Corporation (36.0%); The United Illuminating Company (17.5%); Great Bay Power Corporation (12.1%); New England Power Company (9.96%); The Connecticut Light and Power Company (4.06%); Canal (3.52%); Little Bay Power Corporation (2.90%); and New Hampshire Electric Cooperative, Inc. (2.17%).

- Department of Public Utility Control (“CT DPUC”) selected JPMorgan, a nationally prominent investment-banking firm, to conduct the auction. The auction was supervised by the NHPUC staff and the CT DPUC’s specially appointed Utility Operations Management and Analysis auction team (“UOMA”).
11. In conducting the auction, JPMorgan used a confidential and competitive process, consisting of an initial identification of potential bidders, followed by the bidder due diligence procedure, in which bidders were given access to an electronic data room. Bidders were allowed to submit confidential questions and participate in individual pre-bid meetings. The binding bids ultimately submitted were subject only to on-site verification. JPMorgan, together with UOMA and designated staff of the NHPUC, chose the winning bidder. The auction process is described in detail in the Dabbar Testimony.
 12. On April 13, 2002, JPMorgan announced that FPLE Seabrook was the winning bidder. FPLE Seabrook is an indirect, wholly-owned, special-purpose subsidiary of FPL Energy, LLC, the independent power producer subsidiary of FPL Group. FPL Energy, LLC operates a 5,117-megawatt portfolio of plants in 14 states. FPL Group also owns and operates four nuclear generating units similar in design to Seabrook.
 13. The primary terms of the PSA include the following:
 - FPLE Seabrook will purchase 88.23 percent of Seabrook (including Unit 1 and the partially constructed Unit 2) for \$836.6 million, subject to certain adjustments at closing.
 - FPLE Seabrook will assume the decommissioning liability for the acquired portion of Seabrook, and also will assume the existing decommissioning trust funds of the Selling Owners, with the Selling Owners responsible for any top-

off payment to meet the decommissioning funding requirements of the New Hampshire Nuclear Decommissioning Financing Committee.

- The transaction does not require a PPA between FPLE Seabrook and any of the Selling Owners after the closing.
- The Selling Owners will be relieved of liabilities relating to Seabrook's future decommissioning costs, capital additions and operating expenses.

14. In reviewing a petition to divest generation assets, the Department considers the consistency of the proposed transaction with the company's Restructuring Plan and the Electric Industry Restructuring Act (Chapter 164 of the Acts of 1997) (the "Restructuring Act"). The Department has held that consistency is shown if the "sale process is equitable and maximizes the value of the existing generation facilities being sold." Boston Edison Company/Commonwealth Electric Company, D.T.E. 98-119/D.T.E. 98-126, at 5 (1999). The Department has also determined that a sale process is deemed equitable and structured to maximize the value of the existing generation facilities being sold if the company establishes that it used a "competitive auction or sale" that ensured "complete, uninhibited, non-discriminatory access to all data and information by any and all interested parties seeking to participate in such auction or sale." Id. As stated above and detailed in the Dabbar Testimony, the sale was accomplished through a competitive auction that provided complete access to all pertinent data by all participants. The auction was conducted by JPMorgan, under the supervision of two government agencies, the NHPUC and the CT DPUC, for the express purpose of ensuring fair and equitable treatment and to maximize the value of the assets being sold.

15. By meeting the Department's specific standards for the sale of generation assets, the Petitioners have mitigated transition costs, to the maximum extent possible, as required by G.L. c. 164, §§ 1A and 1G. In accordance with the Petitioners' Restructuring Plan approved by the Department in D.P.U./D.T.E. 97-111, the net proceeds associated with the Buyout Agreement would be included in the Cambridge and Commonwealth Transition Charges, which are reconciled annually. This is further described in the Martin Testimony.
16. The Petitioners' request in this proceeding is entirely consistent with the requests of other electric companies for approval of asset divestiture that have been granted by the Department. See Western Massachusetts Electric Company, New England Power Company, and Fitchburg Gas and Electric Light Company, D.T.E. 00-68 (2000) (Millstone); Western Massachusetts Electric Company, D.T.E. 99-74 (2000); Western Massachusetts Electric Company, D.T.E. 99-29 (1999); Boston Edison Company, D.T.E. 98-119 (1999); Cambridge Electric Light Company, Commonwealth Electric Company and Canal Electric Company, D.T.E. 98-78/83 (1998); Boston Edison Company, D.T.E. 97-113 (1998); and Massachusetts Electric Company, D.T.E. 97-94 (1998).

IV. BUYOUT AGREEMENT

17. The Buyout Agreement provides for Cambridge and Commonwealth's buyout of any and all of their obligations pursuant to the Seabrook PPA between Cambridge, Commonwealth and Canal for the purchase of capacity and energy from Seabrook. The amount to be paid (the "Buyout Amount") is estimated to be

\$14.4 million (with a proposed closing date in late November 2002) and includes the following three categories of credits and payments:

- Canal shall credit 80.06 percent and 19.94 percent of its proceeds for Seabrook Unit 1 to Commonwealth and Cambridge, respectively, net of certain adjustments, including, but not limited to: (i) out-of-pocket costs associated with the sale of Seabrook Unit 1 and Seabrook Unit 2, (ii) employee severance costs; (iii) transfer and sales taxes; and (iv) a 10 percent adjustment associated with the investment in Seabrook Unit 2.²
- Cambridge and Commonwealth shall make a closing payment to Canal in an amount equal to their respective contract shares of the following Seabrook-related costs: (i) the balance of Canal's net unit investment in Seabrook; (ii) decommissioning costs; and (iii) billing, payment and accounting liabilities associated with the Seabrook PPA.
- To the extent that Canal may incur liability to government entities or to private parties arising out of its ownership or operation of Seabrook prior to the closing date, Cambridge and Commonwealth will remain responsible for their respective contract shares of Canal's 3.52317 percent of such liability (to the extent that Canal is not otherwise entitled to indemnification, compensation or other reimbursement from FPLE Seabrook, an insurer or any other party). Accordingly, to the extent that Canal receives refunds, credits, reimbursements or other compensation from government entities or private parties associated with its ownership or operation of Seabrook before the effective date, Canal will remit such amounts to Cambridge and Commonwealth based on their respective contract percentages (net of the costs of obtaining such recoveries).

18. G.L. c. 164, §§ 1A and 1G require electric companies to seek to mitigate transition costs, including, as one mitigation method, the renegotiation of above-market power-purchase contracts. G.L. c. 164, § 1G(d)(1) and (2).
19. In reviewing power contract buyouts, buydowns and renegotiations, the Department has applied a standard of reasonableness. Commonwealth Electric Company (Lowell Cogen Buyout), D.T.E 99-69, at 7 (1999); Boston Edison

² For purposes of disposition of Seabrook Unit 2's assets and liabilities, the Commonwealth Share is 80 percent and the Cambridge Share is 20 percent, pursuant to FERC Docket ER86-704-001 (1988).

Company (L'Energia Buyout), D.T.E. 99-16, at 5-6 (1999); Western Massachusetts Electric Company (Springfield Resource Contract Restructuring), D.T.E. 99-56, at 7-8 (1999). In assessing the reasonableness of a power-purchase contract renegotiation, buyout or buydown, the Department reviews available information to ensure that the agreement is consistent with the public interest. Western Massachusetts Electric Company, D.T.E. 99-101, at 5-6 (2000) (MASSPOWER Buyout); Commonwealth Electric Company, D.P.U. 91-200, at 5 (1993); Boston Edison Company, D.P.U. 92-183 (1992) (Department approval of a termination agreement of a purchase-power contract with Down East Peat, L.P.).

20. In addition, in D.P.U./D.T.E. 97-111, at 90 (1998), the Department found that the Petitioners' Restructuring Plan, which provided for the buyout and buydown of above-market purchase-power obligations, was consistent with or substantially complied with the Act. Id.

V. EWG STATUS

21. As a condition to closing the sale of Seabrook to FPLE Seabrook, FPLE Seabrook must obtain the determination of the Federal Energy Regulatory Commission ("FERC") that it qualifies as an "exempt wholesale generator" under Section 32 of PUHCA. EWG status is critical to FPLE Seabrook because EWG status allows it to own and operate the assets without regulation under PUHCA. Without EWG status, the Seabrook assets would be virtually unmarketable.

22. FERC's EWG finding must be based, in part, on a determination that the purchased facilities are "eligible facilities."³ If such facilities have been in the seller's retail rates as of October 24, 1992, the determination that they are "eligible facilities" depends, in part, on specific findings by the state regulatory commission having jurisdiction over such facilities. Because the assets to be sold were in Cambridge's and Commonwealth's retail rates as of October 24, 1992, and because the Department had jurisdiction over such facilities, specific findings must be obtained from the Department in order to obtain the required "eligible facilities" findings from FERC.
23. In order to obtain the relevant findings from FERC regarding Seabrook's status as an "eligible facility," the Department must find that allowing the divested asset to be an "eligible facility": (a) will benefit consumers; (b) is in the public interest; and (c) does not violate state law.⁴

³ Section 32(a)(2) of PUHCA defines "eligible facility" as: "a facility, wherever located, which is either (A) used for the generation of electric energy exclusively for sale at wholesale, or (B) used for the generation of electric energy and leased to one or more public utility companies, provided, however, that any such lease shall be treated as a sale of electric energy at wholesale for purposes of sections 824d and 834e of Title 16."

⁴ In pertinent part, Section 32(c) of PUHCA (15 U.S.C.A. § 79z-5a(c)) provides as follows:

If a rate or charge for, or in connection with, the construction of a facility, or for electric energy produced by a facility (other than any portion of a rate or charge which represents recovery of the cost of a wholesale rate or charge) was in effect under the laws of any State as of October 24, 1992, in order for the facility to be considered an eligible facility, every State commission having jurisdiction over any such rate or charge must make specific determination that allowing such facility to be an eligible facility (1) will benefit customers, (2) is in the public interest, and (3) does not violate State law; provided, that in the case of such a rate or charge which is a rate or charge of an affiliate of a registered holding company: ...(A) such determination with respect to the facility in question shall be required from every State commission having jurisdiction over the retail rates and charges of the affiliates of such registered holding company;....

24. The findings necessary for EWG status should be granted for several reasons. First, consumers will benefit because additional generating capacity will be available for sale in the competitive market. Because the competitive market is expected to function more efficiently than the rate-regulated system of generation, consumers should benefit through lower prices. This benefit has been recognized by the Department in the context of electric utility restructuring in Massachusetts. Second, designation of the facilities as eligible facilities is in the public interest because it supports Massachusetts' stated goals to eliminate the vertical integration of the electric utility industry and to make electricity generation a competitive function. Third, such designation does not violate state law. On the contrary, the sale is completely consistent with the Restructuring Act and G.L. c. 164.
25. The findings herein requested under Section 32 of PUHCA are identical to those requested by electric companies and granted by the Department in other asset divestiture proceedings. See, e.g., Western Massachusetts Electric Company, New England Power Company and Fitchburg Gas and Electric Light Company, D.T.E. 00-68 (2000) (Millstone), Western Massachusetts Electric Company, D.T.E. 99-29 (1999); Western Massachusetts Electric Company, D.T.E. 99-74 (2000), Cambridge Electric Light Company, Canal Electric Company and Commonwealth Electric Company, D.T.E. 98-78/83 (1998).
26. Apart from the Department's approval in this proceeding, the Seabrook sale is contingent on obtaining additional regulatory approvals.

WHEREFORE, Canal Electric Company respectfully requests the Department to approve the sale of its Seabrook assets, Cambridge Electric Light Company and Commonwealth Electric Company respectfully request the Department to approve the Buyout Agreement with Canal Electric Company, and the Petitioners request that the Department make the following findings:

- A. The sale process by which the Seabrook assets were offered for sale ensured complete, uninhibited non-discriminatory access to all data and information by all parties seeking to participate in the auction and therefore was equitable.
- B. The divestiture process maximized the value of the generating assets for customers.
- C. The sale of the Seabrook assets is consistent with the Petitioners' Restructuring Plan.
- D. Any and all authorizations that may be required under Massachusetts law for the sale of Petitioners' Seabrook assets, as described herein, have been satisfied, including, without limitation, approval pursuant to G.L. c. 164, §§ 1A through 1H and 76.
- E. The Buyout Agreement is consistent with applicable law, including relevant portions of the Act and Cambridge and Commonwealth's approved Restructuring Plan, is in the public interest, and will result in just and reasonable rates for Cambridge's and Commonwealth's retail customers, in accordance with G.L. c. 164, §§ 94, 94A and 94B.

- F. That Cambridge and Commonwealth, in entering into the Buyout Agreement, have taken all reasonable steps to mitigate, to the maximum extent possible, the total amount of transition costs relating to Seabrook in accordance with G.L. c. 164, § 1G.
- G. That the Buyout Agreement is in the public interest, consistent with G.L. c. 164, §§ 76, 94, 94A and 94B.
- H. The Seabrook assets are “eligible facilities” under PUHCA, § 32(c), because the sale of the assets: (1) will benefit consumers; (2) is in the public interest; and (3) does not violate state law.
- I. The Petitioners also respectfully request that the Department grant any other approvals and make any other findings that may be necessary or appropriate to facilitate the sale of the assets as described herein.
- J. The Petitioners respectfully request a decision from the Department by August 30, 2002 to allow the sale of Seabrook to be completed by late November 2002.

Respectfully submitted,

**CANAL ELECTRIC COMPANY
CAMBRIDGE ELECTRIC LIGHT COMPANY
COMMONWEALTH ELECTRIC COMPANY**

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Dated: May 17, 2002